Cedars-Sinai Medical Center *and* Chandra Lips. Case 31–CA–143038

September 30, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

On March 15, 2016, Administrative Law Judge Ariel L. Sotolongo issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The Charging Party also filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.[1]

I. BACKGROUND

Since at least July 2011, the Respondent has maintained a Mutual Agreement to Arbitrate Claims (Agreement), which employees are required to sign as a condition of employment. The relevant portion of the Agreement reads as follows:

> It is not uncommon for disputes to arise between an employer and an employee. Arbitration is a speedy, impartial and cost-effective way to resolve these disputes. For this reason, except as otherwise provided in this Agreement, you and Cedars-Sinai agree that all claims or controversies in any way relating to or associated with your employment or the termination of your employment ("Claims") will be resolved exclusively by binding arbitration. For purposes of this Agreement, Claims includes, but is not limited to, all statutory, contractual and/or common law claims including, but not limited to, claims arising under Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; the Equal Pay Act of 1963; the California Fair Employment and Housing Act; California Labor Code sections 200, et seq., 970, and 1050, et seq; the Fair Labor Standards Act; and the Americans with Disabilities Act.
>
> Claims not covered by this Agreement
>
> This Agreement to Arbitrate does not apply to:
>
> - Workers' Compensation or Unemployment Insurance claims;
> - Claims which parties are legally prohibited from submitting to arbitration;
> - Claims under an employee pension or benefit plan, the terms of which contain its own arbitration or claims review procedure;
> - Claims covered by an applicable collective bargaining agreement or that are preempted by federal labor laws;
> - Claims of employees with written "Employment Agreements" that contain arbitration provisions.
>
> . . .
>
> By signing this agreement, you agree that Cedars-Sinai and you will have claims decided by an arbitrator rather than by a judge or jury.

In 2011, Charging Party Chandra Lips signed a copy of the Agreement as a condition of her employment with the Respondent. On April 18, 2014, Lips filed a complaint for damages with the designated arbitration association regarding a dispute that arose out of her employment and sought class status for those employees similarly situated. In response, the Respondent argued that the Agreement did not permit class arbitration. Ultimately, the arbitrator determined that the Agreement did not preclude class arbitration and allowed Lips to proceed. The Respondent filed a motion for reconsideration with the arbitrator and also filed a "Complaint for Declaratory Relief" in state court. Its filing in state court sought to prevent Lips from pursuing class status in arbitration pursuant to the terms of the Agreement.

II. DISCUSSION

The judge found that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by maintaining the Agreement because employees would reasonably read it to prohibit the filing of unfair labor practice charges with the Board. In addition, the judge found that the Respondent violated Section 8(a)(1) by filing the request for declaratory relief in state court seeking to force Lips into individual arbitration because it restricted her right to pursue collective action. Finally, the judge dismissed the allegation that the Respondent violated Section 8(a)(1) by opposing Lips' request for class action status before the arbitrator.

[1] We shall modify the judge's recommended Order to conform to our findings and in accordance with our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997). We shall also substitute a new notice to conform to the Order as modified.

For the reasons stated by the judge, we agree with his dismissal of the allegation that the Respondent unlawfully opposed the request for class action status before the arbitrator.[2] For the reasons set forth below, we also adopt his finding that maintenance of the Agreement is unlawful to the extent that it applied to claims arising under the Act. However, we reverse the judge's finding that the Respondent unlawfully filed a request for declaratory relief in state court.

A. Maintenance of the Mutual Agreement to Arbitrate Claims

In concluding that the Respondent unlawfully maintained the Agreement, the judge applied the Board's decision in *U-Haul Co. of California,* 347 NLRB 375, 377–378 (2006), enfd. 255 Fed.Appx. 527 (D.C. Cir. 2007), which relied on the "reasonably construe" prong of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). In *The Boeing Company*, 365 NLRB No. 154 (2017), the Board overruled the "reasonably construe" prong of *Lutheran Heritage* and announced a new standard, which applies retroactively, for evaluating the lawfulness of a facially neutral policy. Id., slip op. at 3, 16–17.[3]

In *Prime Healthcare Paradise Valley, LLC*, the Board held that "an arbitration agreement that explicitly prohibits the filing of claims with the Board or, more generally, with administrative agencies must be found unlawful" because "[s]uch an agreement constitutes an explicit prohibition on the exercise of employee rights under the Act." 368 NLRB No. 10, slip op. at 5 (2019). The Board further stated that where an agreement does not explicitly prohibit the filing of claims with the Board, the Board must apply the standard set forth in *Boeing* and initially "determine whether that agreement, 'when reasonably interpreted, would potentially interfere with the exercise of NLRA rights.'" Id. (quoting *Boeing*, above, slip op. at 3). "The 'when reasonably interpreted' standard is objective and looks solely to the wording of the rule, policy, or other provision at issue[,] . . . interpreted from the employees' perspective." Id., slip op. at 6 fn. 14.

Applying this standard, the Board found that the arbitration agreement in *Prime Healthcare* violated the Act because its provisions, "taken as a whole, make arbitration the *exclusive* forum for the resolution of all claims, including federal statutory claims under the National Labor Relations Act." Id., slip op. at 6 (emphasis in original). Further, the Board found that, "as a matter of law, there is not and cannot be any legitimate justification for provisions, in an arbitration agreement or otherwise, that restrict employees' access to the Board or its processes." Id.

The Agreement here requires that "all claims or controversies in any way relating to or associated with . . . employment or the termination of . . . employment . . . will be resolved exclusively by binding arbitration," including "all statutory . . . claims." As in *Prime Healthcare*, this language, when reasonably interpreted under *Boeing*'s objective reasonable employee standard, plainly makes arbitration the exclusive forum for the resolution of statutory claims arising under the Act. Further, claims arising under the Act are not specifically listed among those claims not covered by the Agreement's otherwise exclusive arbitration mandate. The Respondent contends, however, that the exclusion of claims that are "preempted by federal labor laws" is a sufficient savings clause to render the Agreement lawful. We disagree. As recounted in *Prime Healthcare*, above, slip op. at 3–4, the General Counsel has suggested six principles for analyzing arbitration agreements in light of *Boeing*, with the fourth such principle stating as follows:

> Vague savings clauses that would require employees to "meticulously determine the state of the law" themselves are likely to interfere with the exercise of NLRA rights. Such clauses include, for example, those stating that "nothing in this agreement shall be construed to require any claim to be arbitrated if an agreement to arbitrate such claim is prohibited by law," or that exclusively require arbitration but limit that requirement to circumstances where a claim "may lawfully be resolved by arbitration."

We find that this principle applies here.[4] The vague reference to the exclusion of claims that are "preempted by federal labor laws" is the only language relied on by the Respondent as a savings clause allegedly sufficient to exclude claims arising under the Act from the Agreement's otherwise explicit inclusion of all statutory claims. An objectively reasonable employee, as defined in *Boeing* and *Prime Healthcare*, reading this vague language would not divine an implicit intent to exclude claims arising under

[2] See also *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 684 (2010) (holding that a "party may not be compelled under the [Federal Arbitration Act] to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so") (emphasis in original).

[3] Under *Boeing*, the Board first determines whether a challenged rule or policy, reasonably interpreted, would interfere with the exercise of rights under Sec. 7 of the Act. If not, the rule or policy is lawful. If so, the Board evaluates two things: "(i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule." Id., slip op. at 3. The *Boeing* standard replaced the "reasonably construe" prong of *Lutheran Heritage*. Other aspects of *Lutheran Heritage* remain intact, including whether a challenged rule or policy explicitly restricts activities protected by Sec. 7. 343 NLRB at 646.

[4] We do not otherwise pass on the merits of the General Counsel's six principles. Accord *Prime Healthcare*, above, slip op. at 3 fn. 4.

the Act. It is unlikely that such an employee would be familiar with the legal doctrine of preemption, let alone what actions and claims are preempted by federal labor laws. See *Prime Healthcare*, above, slip op. at 3; *Ingram Book Co.*, 315 NLRB 515, 516 fn. 2 (1994) ("Rank-and-file employees do not generally carry lawbooks to work or apply legal analysis to company rules as do lawyers, and cannot be expected to have the expertise to examine company rules from a legal standpoint.").[5] For that matter, the concept of labor law preemption has frequently eluded definition even among those in the legal profession, has involved extensive litigation, and has required interpretation by the Supreme Court on several occasions. See, e.g., *Chamber of Commerce v. Brown*, 554 U.S. 60 (2008); *Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180 (1978); *Machinists Lodge 76 v. Wisconsin Employment Relations Commission,* 427 U.S. 132 (1976); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959).

In sum, the language of the Agreement, when reasonably interpreted, makes arbitration the exclusive forum for resolution of claims arising under the Act, and the Agreement's carve-out of claims "preempted by federal labor laws" is legally insufficient. The Agreement restricts employee access to the Board, and such a restriction of Section 7 rights cannot be supported by any legitimate business justification.[6] Accordingly, we find that the Respondent violated Section 8(a)(1) of the Act by maintaining the Agreement.[7]

B. Respondent's Opposition to Class Arbitration

The judge found, relying on the Board's decision in *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), that the Respondent violated Section 8(a)(1) by filing a state court action to force Lips into individual arbitration rather than class arbitration. After the judge issued his decision, the Supreme Court issued a decision in *Epic Systems Corp. v. Lewis*, 584 U.S. __, 138 S. Ct. 1612 (2018), a consolidated proceeding including review of the court decision below in *Murphy Oil*, in which the Supreme Court expressly rejected the rationale from *Murphy Oil*, which the judge relied on to find the violation at issue. Accordingly, in light of the Supreme Court's decision in *Epic Systems*, we reverse the judge's finding and conclude that the complaint allegation that the Respondent unlawfully sought to compel Lips into individual arbitration must be dismissed.

ORDER

The National Labor Relations Board orders that the Respondent, Cedars-Sinai Medical Center, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a Mutual Agreement to Arbitrate Claims that employees reasonably would believe bars or restricts the right of employees to file charges with the National Labor Relations Board.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the Mutual Agreement to Arbitrate Claims in all its forms or revise it in all its forms to make clear to employees that the Mutual Agreement to Arbitrate Claims does not bar or restrict employees' right to file charges with the National Labor Relations Board.

(b) Notify all current and former employees who were required to sign or otherwise became bound to the Mutual Agreement to Arbitrate Claims in any form that the Mutual Agreement to Arbitrate Claims has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

(c) Within 14 days after service by the Region, post at all its facilities in California where the Mutual Agreement to Arbitrate Claims is or has been in effect, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily

[5] This is in contrast to the savings clause language in the arbitration agreement found lawful in *Briad Wenco*, 368 NLRB No. 72 (2019). That language expressly stated: "Nothing in this Agreement shall be construed to prohibit any current or former employee from filing any charge or complaint or participating in any investigation or proceeding conducted by an administrative agency, including but not limited to . . . the National Labor Relations Board . . . ." Id., slip op. at 1.

[6] Therefore, the Agreement would be considered a "Category 3" policy under *Boeing*. 365 NLRB No. 154, slip op. at 4, 15.

[7] Member McFerran acknowledges that *Boeing*, above, is currently governing law, and joins the majority in applying that standard for institutional reasons but adheres to and reiterates her dissent in that case. Here, Member McFerran agrees with her colleagues that employees would reasonably construe the Agreement as prohibiting employees from filing charges with the Board, under either the standard set forth in *Boeing* or the previous standard.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix" to all current employees and former employees employed by the Respondent at any time since June 16, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2019

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a Mutual Agreement to Arbitrate Claims that you reasonably would believe bars or restricts your right to file charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the Mutual Agreement to Arbitrate Claims in all its forms or revise it in all its forms to make clear that the Mutual Agreement to Arbitrate Claims does not restrict your right to file charges with the National Labor Relations Board.

WE WILL notify all current and former employees who were required to sign or otherwise became bound to the Mutual Agreement to Arbitrate Claims in any form that the Mutual Agreement to Arbitrate Claims has been rescinded or revised and, if revised, WE WILL provide them a copy of the revised agreement.

CEDARS-SINAI MEDICAL CENTER

The Board's decision can be found at https://www.nlrb.gov/case/31-CA-143038 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

Nikki N. Cheaney, Esq., for the General Counsel.
Henry E. Farber, Esq., and *Taylor S. Ball, Esq. (Davis Wright Tremaine LLP),* for the Respondent.
I. Benjamin Blady, Esq. (Blady Weinreb Law Group, LLP), for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARIEL L. SOTOLONGO, Administrative Law Judge. On May 29, 2015, the Regional Director for Region 31 of the Board, based on a charged filed by Chandra Lips, an individual (the Charging Party), issued a complaint alleging that Respondent Cedars-Sinai Medical Center violated Section 8(a)(1) of the Act by: (1) maintaining a mandatory arbitration agreement that could reasonably be interpreted by employees to preclude them from, or restrict them in, filing charges with the Board; and (2) seeking to enforce said mandatory arbitration agreement by filing motions and briefs with an arbitrator to preclude class actions and seeking a declaratory judgment to that effect in the Superior

Court of the State of California. I presided over this case in Los Angeles, California on August 31, 2015. Most of the facts in this case are not in dispute, and indeed almost all the evidence was admitted by way of joint stipulations. There was limited testimony during the trial, as well as offers of proof regarding certain testimony that I ruled was not relevant, as discussed below.[1]

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that it is a corporation with an office and place of business in Los Angeles, California, where it is engaged in the operation of an acute care hospital. In conducting its business operations during the 12-month period ending on April 30, 2015, Respondent received gross revenues in excess of $250,000. During the same time period, Respondent purchased and received at its Los Angeles, California facility goods valued in excess of $5000 directly from points outside the State of California. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that it is a health care institution within the meaning of Section 2(14) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

As briefly discussed above, the central issue in this case concerns the "Mutual Agreement to Arbitrate Claims" (MAA) that Respondent admittedly required its employees to execute as a condition of employment, including Charging Party Sandra Lips.

The MAA provides, in relevant part:

> It is not uncommon for disputes to arise between an employer and an employee. Arbitration is a speedy, impartial and cost-effective way to resolve these disputes. For this reason, except as otherwise provided in this Agreement, you and Cedars- Sinai agree that all claims or controversies in any way relating to or associated with your employment or the termination of your employment (Claims) will be resolved exclusively by binding arbitration. For the purposes of this Agreement, Claims includes, but is not limited to, all statutory, contractual and/or common law claims including, but not limited to, claims arising under Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; the Equal Pay Act of 1963; the California Fair Employment and Housing Act; California Labor Code sections 200, et seq., 970 and 1050, et seq; the Fair Labor Standards Act; and the Americans with Disabilities Act.
>
> <u>Claims not covered by this Agreement</u>
>
> This Agreement to Arbitrate does not apply to:
>
> - Workers' Compensation or Unemployment Insurance claims;
> - Claims which parties are legally prohibited from submitting to arbitration;
> - Claims under an employee pension or benefit plan, the terms of which contain its own arbitration or claims review procedure;
> - Claims covered by an applicable collective bargaining agreement or that are preempted by federal labor laws;
> - Claims of employees with written "Employment Agreements" that contain arbitration provisions.
>
> . . .
>
> By signing this agreement, you agree that Cedars-Sinai and you will have claims decided by an arbitrator rather than by a judge or jury. (GC Exh. 3, 1.)

In a "Joint Stipulation of Facts and Index of Exhibits" (JSF), which is part of the record as Joint Exhibit 1 (Jt. Exh. 1), the parties (General Counsel, Respondent, and Charging Party Lips) agreed to the following facts:

- Charging Party was employed by Respondent as a Medical Staff Assistant II from about July 13, 2011, to about May 10, 2013. By letter dated July 6, 2011, Respondent provided an offer of employment to Charging Party. The letter stated that the offer was "contingent upon . . . [y]our signature on an agreement to arbitrate any claims that may arise from or relate to your employment, with the exception of those claims excluded in the agreement." A copy of Respondent's July 6, 2011 letter is in evidence as General Counsel Exhibit 2.
- The Mutual Agreement to Arbitrate Claims proffered by Respondent to the Charging Party with the offer of employment, and signed by the Charging Party, is in evidence as General Counsel Exhibit 3. Since at least July 12, 2011, Respondent has maintained a Mutual Agreement to Arbitrate Claims and has required employees, including the Charging Party, to sign a Mutual Agreement to Arbitrate Claims as a condition of employment.
- On April 18, 2014, Charging Party filed a Complaint for Damages with the American Arbitration Association against the Respondent in Chandra Lips an individual, vs. Cedars Sinai Medical Center, a California corporation; Saima Abbas, an individual; and Does 1 through 50, inclusive (the Arbitration). A copy of Charging Party's Complaint for Damages is in evidence as General Counsel Exhibit 4.
- On July 8, 2014, Respondent filed an Answering Statement in the Arbitration, a copy of which is in evidence as General Counsel Exhibit 5.
- On October 3, 2014, Respondent filed its Opening Brief Re: Threshold Clause Construction Award Compelling Individual Arbitration in the Arbitration, a copy of which is in evidence as General Counsel Exhibit 6.
- On October 24, 2014, Charging Party filed its Brief in Support of Construction of Arbitration Agreement Permitting Arbitration of Putative Class Claims in the

[1] As discussed further below in more detail, I granted Respondent's request for permission to submit a special appeal to the Board regarding my ruling that certain testimony proffered by Respondent was not relevant, and therefore not admissible. The Board thereafter sustained my ruling on this issue.

Arbitration, a copy of which is in evidence as General Counsel Exhibit 7.

- On November 7, 2014, Respondent filed its Reply Brief Re: Threshold Clause Construction Award Compelling Individual Arbitration in the Arbitration, a copy of which is in evidence as General Counsel Exhibit 8.
- On December 17, 2014, the Arbitrator issued a Clause Construction Award, a copy of which is attached as General Counsel Exhibit 9.
- On December 27, 2014, Respondent sought reconsideration of the Clause Construction Award and filed a Reconsideration Brief in the Arbitration, a copy of which is in evidence as General Counsel Exhibit 10.
- On April 9, 2015, the Arbitrator declined to reconsider the Clause Construction Award, holding that she did not have jurisdiction to do so. A copy of the Arbitrator's Ruling is in evidence as General Counsel Exhibit [11].[2]
- On February 2, 2015, Respondent filed a Complaint for Declaratory Relief in the Superior Court of the State of California, County of Los Angeles in *Cedars-Sinai Medical Center, a California Corporation, and Saima Abbas, an individual v. Chandra Lips, an individual,* Case No. BC 571046, a copy of which is in evidence as General Counsel Exhibit [12].[3] This action for Declaratory Relief is still pending in the Superior Court.
- Charging Party filed the charge in Case 31–CA–143038 on December 16, 2014, and a copy of the charge was served on Respondent by U.S. mail on December 17, 2014.
- Charging Party filed the first amended charge in Case 31–CA–143038 on April 1, 2015, and a copy of the first amended charge was served on Respondent by U.S. mail on April 3, 2015.
- On January 16, 2015, Jonathan Clemons, an employee of Respondent, filed a charge against Respondent in Case 31–CA–144678 in which he alleged that Respondent violated Section 8(a)(3) and (1) of the Act by terminating him. A copy of the charge in Case 31–CA–144678 is in evidence as Respondent Exhibit 1. Mr. Clemons signed the same Mutual Agreement to Arbitrate Claims as the Charging Party. A copy of the Mutual Agreement to Arbitrate Claims signed by Mr. Clemons is in evidence as Respondent Exhibit 2. The charge in Case 31–CA–144678 was withdrawn by Mr. Clemons on or about March 30, 2015. At no time did Respondent contend that the Mutual Agreement to Arbitrate Claims signed by Mr. Clemons precluded him from filing the charge or operated as a defense to the charge.
- On March 16, 2015, Daniel Zaldana, an employee of Respondent, filed a charge against Respondent in Case 31–CA–148392 in which he alleged that Respondent violated Section 8(a)(3) and (1) of the Act by terminating him. A copy of the charge in Case 31–CA–148392 is in evidence as Respondent Exhibit 3. Mr. Zaldana signed the same Mutual Agreement to Arbitrate Claims as the Charging Party. A copy of the Mutual Agreement to Arbitrate Claims signed by Mr. Zaldana is in evidence as Respondent Exhibit 4. The charge in Case 31–CA–148392 was dismissed by Region 31 on May 29, 2015. A copy of the dismissal letter from the Regional Director of Region 31 of Mr. Zaldana's charge is in evidence as Respondent Exhibit 5. At no time did Respondent contend that the Mutual Agreement to Arbitrate Claims signed by Mr. Zaldana precluded him from filing the charge or operated as a defense to the charge.

Other than the above facts, neither the General Counsel nor the Charging Party offered any additional evidence, including testimony from any witness. Respondent, on the other hand, called as a witness Catherine Jeter, its labor relations manager. Jeter testified that as part of her duties, she routinely conducted training and orientation classes for employees, during which they were instructed about the provisions of the National Labor Relations Act (NLRA). As part of this training, Jeter told these employees that they were free to access the Board without fear of retribution. She also testified that over the years, employees have filed charges with the Board against Respondent, and that Respondent has not taken any action to preclude the filing of charges with the Board. Jeter admitted during cross examination, however, that she has only provided these training sessions to registered nurses, not any other type of employees. She admitted that the Charging Party was a "Management Assistant," and that management assistants were not given the above-described training. (Tr. 36–37; 40–42; 47–53; 54–57.)

In addition to the testimony of Jeter, Respondent sought to introduce the testimony of two additional witnesses, Nancy Ishioka, a recruitment manager, and Edward Finegan, a professor at the University of Southern California (USC). Respondent sought to show, through the testimony of Ishioka, that Respondent's employees are required to have at least a high school education and to be proficient in English. Through the testimony of Finegan, as an expert witness on linguistics, Respondent sought to show that given the above employee requirements and characteristics, no employee could reasonably interpret the MAA to preclude the filing of charges with the Board. Both the General Counsel and the Charging Party objected to the testimony of Ishioga and Finegan, on the basis that their testimony was not relevant.[4] I sustained the objection(s), concluding that such testimony was irrelevant in light of the fact that the applicable standard is an objective one, that is, whether an employee could reasonably interpret the MAA to preclude the filing of Board

[2] The JSF is actually incorrect in that this document was actually marked and admitted in the record as GC Exh. 12

[3] This document was actually marked and received as GCExh. 11 (see fn. above).

[4] The General Counsel and Charging Party also objected to the testimony of Finegan on the basis that Respondent had not notified them of its intent to introduce testimony by an expert witness, pursuant to the Federal Rules of Evidence (FRE) §403. In light of my ruling as described below, I find this additional objection need not be addressed.

charges. The Board denied Respondent's special appeal of my ruling, finding that I had not abused my discretion in precluding such testimony. See, *Cedars-Sinai Medical Center,* 31–CA–143038, unpub. Board order issued Dec. 1, 2015 (2015 WL 7769416.

The above-described facts thus constitute the entire record upon which I base my decision.

Discussion and Analysis

The central issue in this case is whether the MAA, admittedly a mandatory condition of employment, violates Section 8(a)(1) of the Act because employees could reasonably interpret it to preclude, or inhibit, employees from filing charges with the Board. Also, at issue is whether Respondent violated Section 8(a)(1) of the Act by opposing the Charging Party's attempt seeking class action status before an arbitrator, and by later seeking declaratory relief from a State court precluding the Charging Party from pursuing class action status before the arbitrator pursuant to the provisions of the MAA. For the reasons discussed below, I conclude that Respondent violated the Act because employees could reasonably interpret the MAA to preclude them from filing charges with the Board. I also conclude that Respondent violated the Act by attempting to have a State court preclude employees from seeking class action status pursuant to the MAA but find that Respondent did not violate the Act by opposing the Charging Party's class action status before an arbitrator.

1. Respondent Violated the Act by Maintaining a Mandatory Arbitration Agreement that Employees could Reasonably Interpret as Precluding the filing of Charges with the Board

At first glance, this case might appear to squarely fit under the category of cases, by now numerous, stemming from the Board's decisions in *D. R. Horton,* 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013) and *Murphy Oil USA, Inc.,* 361 NLRB 774 (2014), enf. denied in part 808 F.3d 1013 (5th Cir. 2015). A closer look reveals, however, that it does not—at least not initially. Although this case, like *D. R. Horton* and *Murphy Oil* involve the existence of a mandatory arbitration agreement that requires the use of arbitration to resolve employment-related disputes, in the present case, unlike in those cases, the MAA does not explicitly preclude employees from initiating or seeking class action status in arbitration or in other forums. Rather, the MAA is silent on this issue.

Under Board precedent, a work rule that may directly or indirectly inhibit or preclude employees from engaging in activity protected by Section 7 must be carefully scrutinized. To determine the validity of any such work rule, including an arbitration agreement, I must first determine, pursuant to the Board's ruling in *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004), if the rule explicitly restricts activities protected by Section 7. If so, the rule is unlawful. If the rule does not explicitly restrict Section 7 rights, I must examine the following criteria: (1) whether employees would reasonably construe the rule to prohibit (or restrict) Section 7 activity; (2) whether the rule was promulgated in response to union activity; and (3) whether the rule has been applied to restrict the exercise of Section 7 rights. *Lutheran Heritage,* at 647; *U-Haul Co. of California,* 347 NLRB 375, 377 (2006), enfd. 255 Fed.Appx. 527 (D.C. Cir. 2007). See, also, *D. R. Horton,* supra.

As discussed above, the MAA does not explicitly prohibit class actions, nor explicitly precludes or restricts other Section 7 activity. Additionally, there is no evidence that the MAA was promulgated in response to protected activity. Accordingly, the MAA must be evaluated by applying the first and third criteria under *Lutheran Heritage*. Applying the first criteria, whether employees could reasonably construe the language of the MAA to prohibit or inhibit Section 7 activity, I conclude that it does. I find that employees could reasonably conclude that the MAA precludes them from filing charges with the Board, because they would first be required to recur to arbitration. I note in this regard that the language of the MAA is sweeping in that it requires employees to submit to arbitration "all statutory, contractual and/or common law claims . . . "(emphasis added). While the MAA later provides for exceptions, including claims ". . . preempted by federal labor laws," such language is too vague for an employee not legally trained—if indeed not versed in labor law—to understand its implications. See, e.g., *Ralph's Grocery Co.,* 363 NLRB No. 128, slip op. at 4 (2016) ("rank and file employees. . . cannot be expected to have the expertise to examine company rules from a legal standpoint." Id., slip op. at 5, quoting *Ingram Book Co.,* 315 NLRB 515, 516 fn. 2 (1994)). Indeed, the Board has repeatedly found language similar to the one in the MAA to be unlawful because employees would reasonably assume it bars them from bringing claims to the Board. See, e.g., *2 Sisters Food Group, Inc.,* 357 NLRB 1816, 1817 (2011); *U-Haul Co. of California,* supra, at 377–378; *Century Fast Foods, Inc.,* 363 NLRB No. 97, slip op. at 10–11 (2016). Even more ominously for Respondent, the Board has also found that even in cases where the language of the arbitration agreement appears to make a specific exception for Board proceedings, the inherent ambiguity in the overall language of such agreement still results in an unlawful impact on the employees' exercise of Section 7 rights. See, e.g., *Amex Card Services Co.,* 363 NLRB No. 40, slip op. at 2–3 (2015), citing *Lafayette Park Hotel,* 326 NLRB 824, 828 (1998) ("[A]ny ambiguity in the rule must be construed against the Respondent as the promulgator of the rule"); *SolarCity Corp.,* 363 NLRB No. 83, slip op. at 4–6 (2015). Needless to say, if the language of arbitration agreements containing language specifically exempting Board proceedings could not save them from running afoul of Section 8(a)(1) of the Act, the MAA, which does not contain any such language, cannot withstand scrutiny.

Respondent argues that evidence contained in the JSF that shows that employees Jonathan Clemons and Daniel Zaldana, and perhaps others, have filed charges with the Board shows that employees would not reasonably understand the language of the MAA to preclude or inhibit the filing of Board charges. I reject this argument because the Board has long made it clear that in determining whether language or conduct can reasonably be interpreted to interfere with, restrain or coerce employees in the exercise of their Sec 7 rights, the test is an objective one. See, e.g., *Multi-Aid Services,* 331 NLRB 1226, 1227–1228 (2000); *American Freightways Co., Inc.,* 124 NLRB 146, 147 (1959). Thus, the mere fact that one or more employees may have had the sophistication or ingenuity to realize that the MAA's

language was not a barrier to filing charges with the Board does not signify that the language could not have been reasonably interpreted by many, if not most, to do just that.[5] For the same reasons, I stand by my ruling that the proffered testimony by Respondent's witnesses Ishioka and Finegan was not relevant, a ruling earlier affirmed by the Board, as noted above. Finally, I find it equally irrelevant that some employees—registered nurses—may have been told during training that they were free to access the Board without fear of retaliation, as testified by Jeter. It is notable that many other categories of employees, including the Charging Party, apparently did not receive similar training.[6] Accordingly, even if it could be assumed that such training somehow neutralized the coercive impact of the MAA's language—a doubtful proposition in light of the cases cited above—many employees, including the Charging Party, did not receive such training, and were thus coerced by the language of the MAA.[7]

In light of the above, I conclude that Respondent violated Section 8(a)(1) of the Act by maintaining a mandatory arbitration agreement that employees could reasonably interpret as precluding them from filing charges with the Board.

2. Respondent violated Section 8(a)(1) of the Act by Filing a Complaint for Declaratory Relief in State Court

As noted in the JSF, On February 2, 2015, Respondent filed a "Complaint for Declaratory Relief" in the Superior Court of the State of California, County of Los Angeles in *Cedars-Sinai Medical Center, a California Corporation, and Saima Abbas, an individual v. Chandra Lips, an individual,* Case No. BC 571046. By filing this action, Respondent seeks to compel the Charging Party to submit her employment-related claims to individual arbitration. In essence, Respondent asks the court to reverse the arbitrator's decision to allow the Charging Party's arbitration to proceed as a class action, and force her to submit to individual arbitration pursuant to the terms of the MAA and "relevant authority," citing, inter alia, a ruling by the California Court of Appeal, *Nelsen v. Legacy Partners Residential, Inc.,* 207 Cal. App. 4th 1115, 1129 (2012), and a Supreme Court case, *Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp.,* 130 S.Ct. 1758, 1775–1776 (2010).

The Board's rulings in *D. R. Horton and Murphy Oil,* supra, are clearly dispositive of this issue. In *Murphy Oil,* the Board, expanding on its ruling in *D. R. Horton,* found that an employer violates Section 8(a)(1) of the Act by seeking to force employees, through court actions, into individual arbitration pursuant to mandatory arbitration agreements, therefore restricting employee rights under Section 7 to pursue collective action. The fact that in *Murphy Oil* the action was filed in Federal court, whereas the action in this case was filed in State court, makes no difference. *Century Fast Foods,* supra, slip op. at 9. Although Respondent, like most if not all employers in these types of cases, argues that *D. R. Horton* and *Murphy Oil* were wrongly decided, pointing to the 5th Circuit's rejection of the Board's views on these matters, I am compelled to follow the Board's decisions unless the Supreme Court overrules the Board. See, e.g., *Pathmark Stores,* 342 NLRB 378, fn. 1 (2004); *Waco, Inc.,* 273 NLRB 746, 749 fn. 14 (1984), and cases cited therein.

Accordingly, and in light of the above, I conclude that Respondent violated Sec. 8(a)(1) of the Act by filing and pursuing a State court action to force the Charging Party into individual arbitration of her employment-related claims.

3. Respondent Did Not Violate the Act by Opposing the Charging Party's Actions to Obtain Class Action Status Before an Arbitrator

As described in the JSF, on April 18, 2014, the Charging Party filed a complaint for damages with the American Arbitration Association (AAA) regarding a dispute that occurred as part of her employment by Respondent. The Charging party filed this action on behalf of herself and other employees ("Does 1 through 50, inclusive"), in essence seeking or alleging class action status. Thereafter, in its initial answer (on July 8, 2014), its opening brief (on October 3, 2014), its reply brief (on November 7, 2014), and motion for reconsideration (on December 27, 2014), Respondent opposed the Charging Party's request for class action status. In its complaint, the General Counsel alleges that this

[5] There is no telling, for example, if Clemmons or Saldana needed to get legal advice, from an attorney or the Board itself, on whether they were restricted by the MAA from filing Board charges. If that were the case, it would be further evidence of the inhibiting nature of the MAA's language.

[6] Moreover, fear of retaliation is not the point. Employees might not fear retaliation—which would be an independent violation of Sec. 8(a)(4) of the Act—but might still be inhibited from filing charges because they could reasonably believe it would be an exercise in futility, given the MAA's preemptive language.

[7] Respondent raises two additional affirmative defenses, both of which lack merit. First, Respondent avers that Charging Party Lips' charge is barred by Section 10(b) of the Act because the charge in this case was filed more than 6 months after she signed the MAA. The Board has repeatedly held, however, that the maintenance of such unlawful arbitration agreement constitutes a "continuing violation" that in essence extends the 10(b) period into infinity. See, e.g., *AWG Ambassador, LLC*, 363 NLRB No. 137, slip op. at 7–8 (2016); *Cellular Sales of Missouri, LLC*, 362 NLRB 241, 242 and fn. 7 (2015); *The Neiman Marcus Group*, 362 NLRB 1286, 1287 fn. 6 (2015) and cases cited therein. Additionally, Respondent argues that Lips was not an "employee" within the meaning of Section 2(3) of the Act because she was no longer employed by Respondent, and because she had not lost her job due to a "labor dispute" or because of an unfair labor practice, citing *Chemical Workers v. Pittsburgh Glass*, 404 U.S. 157, 166 (1971); and *Operating Engineers, Local 39*, 346 NLRB 336, 347 fn. 9 (2006). Respondent misreads both cases. In *Chemical Workers* the Supreme Court stressed that the individuals at issue had long since retired and were no longer members of an active work force or available for hire. The Court therefore concluded that the employer had no obligation to bargain with the union regarding a change in their retiree pension or benefits, since these individuals were no longer employees within the meaning of Sec. 2(3). Such is far from the case with Charging Party Lips, a relatively young woman who has not retired and who appears to be contesting the underlying cause of her termination by Respondent in the arbitration proceedings. The passage cited by Respondent in *Operating Engineers*—to the effect that an individual had been discharged for "cause" and was thus no longer a Sec. 2(3) employee- appears to be dicta by the Administrative Law Judge, who did not rely on that conclusion as the main factor in his decision. Far more on point are the Board decisions in *Haynes Building Services, LLC*, 363 NLRB No. 125, slip op. at 12 (2016), and cases cited therein, including *Waco, Inc.*, 273 NLRB 746, 747 (1984), and *Cellular Sales*, supra., where the Board re-affirmed the principle that former employees are indeed "employees" within the meaning of Sec. 2(3).

conduct by Respondent, as detailed on paragraphs on paragraph 4(a), (b), (c), and (e) of the complaint (and admitted as part of the JSF), violated Sec. 8(a)(1) of the Act, as alleged on paragraph 6, which encompasses all the conduct alleged in paragraphs 3 through 5 of the complaint.[8] Curiously, in its brief, the General Counsel does not even discuss Respondent's conduct in regard to the filing of the legal briefs and motions submitted to the arbitrator, only discussing Respondent's conduct with regard to filing its motion for declaratory relief in State court, discussed above. Whether this was by oversight or because the General Counsel decided not to pursue the allegations in paragraph(s) 4(a), (b), (c), (d) and (e) is not clear, since the General Counsel never withdrew such allegations. It might as well have, because the Board's decisions in *Citigroup Technology, Inc.,* 363 NLRB No. 55 (2015), and more recently, *Concord Honda,* 363 NLRB No. 136, slip op. at 1–2 (2016), indicate that where an employee initially files an initial action with an arbitrator, an employer's filings with the arbitrator opposing class action status are not unlawful, even if such opposition is based on a mandatory arbitration agreement that arguably precludes class action status. While the Board does not go into much detail explaining its rationale in these decisions, I believe it is based on its discussion in *D. R. Horton* and *Murphy Oil*, in which the Board correctly explained that class action status is not guaranteed by Section 7—only the right to seek such status is. Therefore, an employer is free to oppose the granting class action status before an arbitrator. It is only when an employer seeks enforcement of an unlawful arbitration agreement in court to automatically preclude class actions that it runs afoul of Section 8(a)(1) of the Act.

Accordingly, and for these reasons, I conclude that the allegations of paragraph 6 of the complaint, as they relate to the conduct alleged in paragraphs 4(a), (b), (c), (d) and (e) of the complaint should be, and are, dismissed.

CONCLUSIONS OF LAW

1. Respondent at all times material herein has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent violated Section 8(a)(1) of the Act by maintaining a mandatory arbitration agreement that employees could reasonably construe to preclude filing of charges with the Board, and by enforcing said arbitration agreement so as to preclude class or collective actions actions.

3. Respondent violated Section 8(a)(1) of the Act by filing a Complaint for Declaratory Relief in the Superior Court of the State of California, County of Los Angeles in *Cedars-Sinai Medical Center, a California Corporation, and Saima Abbas, an individual v. Chandra Lips, an individual,* Case No. BC 571046, on February 2, 2015.

4. Respondent did not otherwise violate the Act, specifically as alleged in paragraph 6 of the complaint as it relates to paragraphs 4(a), (b), (c), and (d) of the complaint.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As I have concluded that the "Mutual Agreement to Arbitrate Claims" (MAA) is unlawful, Respondent must revise or rescind the MAA and advise their employees in writing that the MAA has been revised or rescinded. Further, Respondent shall post notices in all locations where the MAA was in effect informing employees of the revision or rescission of the MAA and shall provide said employees with a copy of any revised versions. Any revision should clarify that such agreement does not bar or restrict employees from seeking class wage and hour actions or any other type of class employment-related actions in any forum, and specifically does not bar or restrict employees from filing charges with the NLRB.

Respondent shall further be ordered to notify the State Court in Case No. BC 571046 that it no longer opposes the plaintiff's claims on the basis of the MAA, which has been rescinded or revised because it was found unlawful, and, if the court grants Respondent's motion, move the court to vacate its order compelling individual arbitration on the basis of the MAA.[9] Respondent shall also be ordered to reimburse Charging Party Lips for all reasonable expenses and legal fees, with interest, incurred in opposing Respondent's unlawful complaint for declaratory relief to compel individual arbitration in a collective action. Interest shall be computed as prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010).

Upon the forgoing findings of fact and conclusions of law, and upon the entire record, I issue the following recommended[10]

ORDER

Respondent *Cedars-Sinai Medical Center*, a corporation with an office and principal place of business in Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a mandatory and binding arbitration agreement that employees would reasonably believe bars or restricts employees' rights to file unfair labor practice charges with the National Labor Relations Board or to access the Board's processes; or enforcing said agreement to preclude class or collective action by its employees.

(b) Filing or maintaining a complaint for declaratory relief to enforce its MAA to thereby compel individual arbitration and preclude employees from pursuing employment-related disputes

[8] Indeed, the all-inclusive language of paragraph 6 of the complaint even subsumes the allegation contained in paragraph 4(d), which describes the arbitrator's decision to grant class action status as sought by the Charging Party. How such action by the arbitrator could be unlawful—and attributable to Respondent—is a mystery to me.

[9] Pursuant to the Board's *D. R. Horton* and *Murphy Oil* rulings, Respondent is free to oppose class certification on any basis *other* that an unlawful arbitration agreement compelling employees to arbitrate employment disputes on an individual basis. As the Board observed, employees have Sec. 7 rights to *seek* class actions, not to have such class actions approved.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

with the Respondent on a class or collective basis in any forum.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the mandatory and binding arbitration agreements in all of its forms, or revise them in all of its forms to make clear to employees that the arbitration agreement does not restrict employees' right to file charges with the National Labor Relations Board or to access the Board's processes, or preclude employees from pursuing employment-related disputes with the Respondent on a class or collective basis in any forum.

(b) Notify all current and former employees who were required to sign the arbitration agreement in any form that they have been rescinded or revised and, if revised, provide them a copy of the revised agreement.

(c) Within 14 days after service by the Region, notify the Superior Court of the State of California in Case No. BC 571046 that it has rescinded or revised the mandatory arbitration agreement upon which it based its complaint for declaratory relief to compel individual arbitration of Chandra Lips' claim, and inform the court that it no longer opposes the action on the basis of the arbitration agreement.

(d) In the manner set forth in this decision, reimburse Sandra Lips for any reasonable attorneys' fees and litigation expenses that she may have incurred in opposing Respondent's complaint for declaratory relief.

(e) Within 14 days after service by the Region, post at all its locations in California where notices to employees are customarily posted, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 16, 2014.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 15, 2016

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a mandatory and binding arbitration agreement that our employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board or to access the Board's processes.

WE WILL NOT maintain and/or enforce a mandatory and binding arbitration agreement that requires our employees, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the mandatory and binding Mutual Agreement to Arbitrate Claims in all of its forms, or revise it in all of its forms to make clear that the arbitration agreement does not constitute a waiver of your right to maintain employment-related joint, class, or collective actions in all forums; that it does not restrict your right to file charges with the National Labor Relations Board or to access the Board's processes; and does not prohibit you from discussing arbitrations with each other.

WE WILL notify all current and former employees who were required to sign the mandatory Mutual Agreement to Arbitrate Claims in all of its forms that the arbitration agreement has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

WE WILL notify the court in which we filed our complaint for declaratory relief that we have rescinded or revised the mandatory Mutual Agreement to Arbitrate Claims upon which we based our complaint.

WE WILL inform the court that we no longer oppose Chandra Lip's collective claim on the basis of that agreement.

WE WILL reimburse Chandra Lips for any reasonable attorneys' fees and litigation expenses that she may have incurred in opposing our complaint for declaratory relief to compel individual arbitration.

Cedars-Sinai Medical Center

[11] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31-CA-143038 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.